

**JUDICIAL COUNCIL OF CALIFORNIA  
ADMINISTRATIVE OFFICE OF THE COURTS**

455 Golden Gate Avenue  
San Francisco, California 94102-3660

**Report Summary**

TO: Members of the Judicial Council

FROM: Civil and Small Claims Advisory Committee  
Hon. Ronald M. Sabraw, Chair  
Patrick O'Donnell, Committee Counsel, 415-865-7665

DATE: April 17, 2000

SUBJECT: *Application and Order for Appearance and Examination* (revise  
Form AT-138, EJ-125) (Action Required)

Issue Statement

The order for examination form has been a Judicial Council–approved form since 1984. The Superior Court of Los Angeles County has proposed that this form be made mandatory because that would result in greater uniformity in the enforcement of judgments and would provide more certainty for the courts. (A similar small claims form, which became effective on January 1, 1998, is already mandatory.)

Recommendation

The Civil and Small Claims Advisory Committee recommends that the Judicial Council, effective July 1, 2000, revise the *Application and Order for Appearance and Examination* (Form AT-138, EJ-125) to make it mandatory.

Rationale For Recommendation

The Civil and Small Claims Advisory Committee agreed that making the order for examination form mandatory would result in greater uniformity in the enforcement of judgments and more certainty for the courts.

Alternatives Considered

The committee considered simply leaving the form unchanged. But because of the form's long history and its widespread use, it is appropriate to make it mandatory.

### Comments From Interested Parties

A total of 14 comments were received on the proposal to make the order for examination form mandatory. All the commentators agreed that the form should be mandatory.

Two commentators further suggested changing a line on the form (item 3). The line currently states: “This order may be served by a sheriff, marshal, constable, registered process server, or the following specially appointed person (*name*): .”<sup>1</sup> The commentators were concerned that this statement does not fully describe the proper method of service of the order. The committee concluded that these comments were based on a misreading of the purpose of the line. The statement is not meant to describe the types of service to be used, but to implement Code of Civil Procedure section 708.170 and provide a space for the court to designate a “specially appointed person” to serve the order. Although the committee may consider revising the form in the future to clarify the statement, it does not think that the council should postpone changing the form to mandatory.

A chart summarizing the comments is attached at pages 5–8.

### Implementation Requirements And Costs

The revision of the order for examination form will require no implementation or costs other than those resulting from replacing copies of the current optional form with the revised mandatory form.

A copy of the revised form is attached at pages 3–4.

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<sup>1</sup> The reference to “constable” in this statement has been deleted from the form because it is obsolete.

**Comments for**  
Should the *Order for Examination* form be made mandatory?

	<b>Commentator</b>	<b>Position</b>	<b>Comment on Behalf of Group</b>	<b>Comments</b>	<b>Committee Response</b>
1.	Phrasel L. Shelton Rules Committee Chair Superior Court of San Mateo County Redwood City, CA	A		No specific comments.	No response necessary.
2.	Alice Lopez Manager-Court Programs Superior Court of Ventura County Ventura, CA	A		No specific comments.	No response necessary.
3.	Stacy Mason Court Services Supervisor II Superior Court of Riverside County	A		No specific comments.	No response necessary.
4.	P. McCarron Court Operations Manager Superior Court of California Palm Springs, CA	A		No specific comments.	No response necessary.
5.	Sharol H. Strickland Court Executive Officer Superior Court of Butte County Oroville, CA	A		No specific comments.	No response necessary.
6.	Susan Cichy Superior Court of Los Angeles County Los Angeles, CA	A		Use of standard forms eases clerical operations.	The committee agreed with this comment.
7.	Murray Gross Commissioner Superior Court of Los	A		Yes, should be mandatory as it will ensure statewide uniformity.	The committee agreed with this comment.

Positions: A = Agree; AM = Agree only if modified; N = Do not agree.

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	Angeles County Los Angeles, CA				
8.	Richard Oliver Attorney San Joaquin County Bar Association	A		Mandatory use of the form would make it easier for judgment debtors to understand what is required of them.	The committee agreed with this comment.
9.	Charlene Walker Div. Manager Superior Court of Sacramento County Sacramento, CA	A	Y	Yes, the order form should be made mandatory.	The committee agreed with this comment.
10.	Mark Lomax Management Analyst Superior Court of Alameda County	AM		This is a very good form, which should be mandatory. I would, however, like to see one change to the form: Add a notice as follows: “This order must be PERSONALLY served on the debtor or third person by a sheriff, marshal, registered process server, or a person specially appointed by the court. (C.C.P. secs. 491.110, 708.110, and 708.170.)”	The committee believed that the commentator may have misconstrued the purpose of item 3, which is not to describe the means of service, but to permit appointment of “a specially appointed person” to serve the order under C.C.P. § 708.170. The committee recommended that the form be made mandatory, and the issue of revising item 3 may be considered further by the committee in the future.
11.	James L. Wright Presiding Judge Superior Court of Los Angeles County Los Angeles, CA	AM		Yes, make the Order for Examination form mandatory.  Other comments:  Item 3 of the Order to Appear for Examination is not consistent with California Statutory Law. Section 708.110(d) of the Code of Civil Procedure provides: “...Service shall be made in the manner specified in section 415.10 (C.C.P.).”	The committee agreed that the form should be made mandatory.    The committee believed that the commentator may have misconstrued the purpose of item 3, which is not to describe the means of service, but to permit appointment of “a specially appointed

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				<p>Section 415.10 provides for personal delivery of a summons and complaint on the person to be served.</p> <p>Persons who may make service of summons is set forth in section 414.10 C.C.P. “A summons may be served by any person who is at least 18 years of age and not a party to the action.”</p> <p>I suggest that Item 3 of the ORDER TO APPEAR FOR EXAMINATION be modified to read as follows:</p> <p>“3. This order may be served by a sheriff, marshal, constable, registered process server, or any person who is at least 18 years of age and not a party to the action.”</p>	<p>person” to serve the order under C.C.P. § 708.170. The committee recommended that the form be made mandatory, and the issue of revising item 3 may be considered further by the committee in the future.</p>
12.	Maggie Martinez Court Services Supervisor II Superior Court of Riverside County	A		Would also like a separate form created for the Affidavit to the court regarding third person orders for appearance that is required pursuant to CCP 708.120.	This proposal raised separate issues and was not considered by the committee at this time.
13.	Ronald Bauer Judge Rules and Forms Committee Santa Ana, CA	A	Y	Staff and Judge Ronald Bauer of the Orange County Superior Court and member of the court’s Rules and Forms Committee reviewed this item and agree that the order for examination form be made mandatory.	The committee agreed with this comment.
14.	Amy Silva Director, Family Law Operations Superior Court of Orange	AM		Since the court name and address appears at the top of the form, why not remove court address line from the box where the hearing date is?	The current form provides a simple box to check if the address is the same and a space to indicate the address if it is different than the address in the caption. This flexible

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	County				format is used on many other Judicial Council forms.
	Orange, CA				